

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

SMARTER EVERY DAY LLC

Plaintiff,

v.

**CONTACT PRIVACY, INC.;
INKEDTILLDEATH.COM,**

Defendants.

CIVIL ACTION NO.:

COMPLAINT

1. The Plaintiff, Smarter Every Day LLC, in this case is a limited liability corporation formed under the laws of the state of Alabama with its principal place of business being in Huntsville, Alabama.

2. The Defendant, Contact Privacy, Inc., is a Canadian corporation with its principal place of business in Toronto, Ontario which upon information and belief serves as a contact/host for InkedTillDeath.com. InkedTillDeath.com reveals no physical address on its websites but is under contract with Contact Privacy, Inc.

STATEMENT OF JURISDICTION

3. Jurisdiction in this case is established under diversity of citizenship under 28 U.S.C. § 1332 and the amount in controversy exceeds the amount specified therein. Jurisdiction further is established under the Digital Millenium

Copyright Act, 17 U.S.C. § 504 and 17 U.S.C. § 1203. Upon information and belief, the acts complained of herein have taken place throughout the United States and specifically within the state of Alabama and the Northern District of Alabama including but not limited to the Southern Division and venue is proper in this Court.

FACTUAL INTRODUCTION

4. Plaintiff, Smarter Every Day LLC, maintains a video uploading presence on You Tube whereby it presents various videos giving insight on various intriguing scientific matters. The principal in Plaintiff's works is Destin Sandlin who is an engineer and, more specifically, a missile flight test engineer in Huntsville, Alabama, who has small children that inspired him to do these videos to illustrate, explain and educate children and other interested viewers on interesting scientific questions. Smarter Every Day LLC holds the copyright on these videos which is prominently displayed on You Tube and has been very successful in the hits and viewings of these videos. Well over 100 such videos have been posted on You Tube under the Smarter Every Day banner. One such video was entitled "Tattooing Close Up (in slow motion)" which was uploaded to You Tube on September 24, 2014.

5. Inked Till Death.com lifted the video and particular still photos from the copyrighted video "Tattooing Close Up (in slow motion)" and posted them on

its own Facebook account in a commercial endeavor to attract business for itself by using the Defendant, Contact Privacy, Inc., as its server/host/contact for this willful endeavor. The entire content of this video was copyrighted and was the intellectual property of its creator, Smarter Every Day LLC. No permission for the use of the video and its contents was requested or received by the Defendants. The downloading of this video and/or its contents apparently occurred when the Defendants published it as InkedTillDeath.com on April 17, 2015. Counsel for Plaintiff notified InkedTillDeath.com by email on June 12, 2015, of this copyright infringement and “freebooting” and demanded a response. No response has come to this date. (See attached Exhibit 1 which is a copy of that email and is made a part of this Complaint). (See also attached Exhibit 2 which is a photo from Plaintiff’s video as posted by Defendants on Facebook).

COUNT I

COPYRIGHT INFRINGEMENT

6. Plaintiff avers that Defendants, separately and severally, have engaged in copyright infringement by the actions described above in lifting and using the contents of the video “Tattooing Close Up (in slow motion)” in willful and flagrant disregard of the clear and apparent copyright of Plaintiff and for their own commercial purpose. This action constitutes what is known as “freebooting” which constitutes copyright infringement under the Digital Millenium Copyright Act and

is a piracy of intellectual property which gives a private cause of action and remedy to Plaintiff pursuant to 17 U.S.C. § 504. As a proximate consequence of these illegal acts and willful copyright infringement, Plaintiff has been caused to suffer financial loss while the Defendants have profited thereby; Plaintiff has suffered impairment of its brand and status in the business community; Plaintiff has been caused to seek legal assistance and the filing of this suit to prevent such infringement in the future and to recover damages and statutory penalties pursuant to 17 U.S.C. § 504.

Wherefore, Plaintiff demands judgment against Defendants, separately and severally, in such sums as will compensate it for its financial loss and to recover the ill-gotten profits of Defendants from this willful infringement. Plaintiff further demands the statutory damages provided in 17 U.S.C. § 504(c) as well as attorney's fees and costs.


COUNT II

FRAUD MISREPRESENTATION AND DECEIT

7. Plaintiff further avers that Defendants have engaged in fraud, misrepresentation and deceit by representing to the public that contents of the above described videos on tattooing were its own and not the copyrighted intellectual property of the Plaintiff. The Defendants went so far as to place a black vignette over the bottom of Plaintiff's video image to remove Plaintiff's watermark

and apply their own to the image. This fraudulent activity was either negligent or intentional and was a material misrepresentation. As a proximate consequence thereof, Plaintiff was caused to suffer financial loss while the Defendants profited; Plaintiff has had its brand impaired in the business community and has suffered reputational damage.

Wherefore, Plaintiff demands judgment against Defendants, separately and severally, in such sums as a jury may assess for compensatory damages and such statutory damages as allowed under Count I as well as attorney's fees and costs.


Stephen D. Heninger (ASB-5227-e68s)

/s/ Stephen D. Heninger
STEPHEN D. HENINGER (ASB-5227-e68s)

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Plaintiff demands trial by jury.


Stephen D. Heninger (ASB-5227-e68s)

/s/ Stephen D. Heninger
STEPHEN D. HENINGER (ASB-5227-e68s)

Serve Defendant by Special Process Server

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